IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Dr.Mithilesh Kumar Sharma v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.1591/2005
under Article 226 of the Constitution of India.

Date of Order : 16th December, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Siddharth Joshi for Mr. J.P.Joshi, for the petitioner.
Mrs.Vidhyawati Bohra, Dy.Govt.Advocate.

BY THE COURT :

By the instant petition a writ in the nature of mandamus is sought by the petitioner to implement the recommendation made by the Departmental Promotion Committee constituted for the purpose of appointment by way of promotion to the post of Director, Sanskrit Education. The petitioner has also sought a direction for his appointment as Director, Sanskrit Education if he is found suitable for the post by Departmental Promotion Committee.

According to the petitioner on account of retirement of one Shri Sohanlal Sharma the post of

Director, Sanskrit Education fell vacant on 31.12.2003. The respondents instead of making regular appointment in accordance with the Rajasthan Sanskrit Education Rules, 1977 (hereinafter referred to as "the Rules of 1977") chose to post one Shri G.P.Shukla who is neither a member of Sanskrit Education Service nor is eligible to be appointed as Director, Sanskrit Education under the Rules of 1977. In place of aforesaid Shri G.P.Shukla one Shri R.K.Jain was handed over charge of the post of Director, Sanskrit Education under an order dated 31.7.2004. Prior to it a meeting of Departmental Promotion Committee was convened on 1.7.2004 to consider candidature of eligible candidates for the purpose of appointment as Director, Sanskrit Education by way of promotion but the respondents did not give effect to it. Being aggrieved by the same instant petition is preferred by the petitioner.

A reply to the writ petition is filed on behalf of the respondents admitting the fact that on account of retirement of Shri Sohanlal Sharma on 31.12.2003 the post of Director, Sanskrit Education fell vacant and in administrative interest for conducting the administrative work of Department of Sanskrit Education the charge of the post of Director, Sanskrit Education was handed over to Shri G.P.Shukla and looking to heavy work-load with Shri G.P.Shukla the charge of the post of Director, Sanskrit Education

was given to Shri R.K.Jain, Special Secretary, Department of Education (Secondary). The respondents in their reply also stated that the process of promotion to the post of Director, Sanskrit Education is going on and till availability of regularly selected candidate by a Departmental Promotion Committee the charge of the post of Director, Sanskrit Education is being given to Special Secretary/Dy. Secretary of the Education in administrative interest.

This Court by an order dated 27.10.2005 directed the respondents to produce record of Departmental Promotion Committee which met to consider candidates for the purpose of promotion to the post of Director, Sanskrit Education, in compliance to which the record is shown to the Court by learned Dy. Government Advocate today. Learned Dy. Government Advocate also shown to the Court a letter dated 15.12.2005 from Dy. Secretary to the Government of Rajasthan, Department of Education (Group-C) in favour of Divisional Sanskrit Education Officer, Jodhpur Division, Jodhpur wherein a instruction is given to the Divisional Sanskrit Education Officer, Jodhpur Division, Jodhpur to convey the Court that proposal with regard to amendment in Rajasthan Sanskrit Education Rules, 1977 is under consideration for making appointment to the post of Director Sanskrit Education from amongst the officers of the Indian Administrative Service/Rajasthan Administrative

Service. A photocopy of the letter above and the relevant portion of the recommendations made by the Departmental Promotion Committee in its meeting dated 3.8.2004 is taken on record.

Heard counsel for the parties.

Admit.

With the consent of counsel for the parties and looking to the fact that the pleadings of the case is complete and original record has already been examined by the Court, the writ petition is heard for its final disposal.

In exercise of powers conferred by proviso to Article 309 of the Constitution of India the Governor of Rajasthan framed the Rajasthan Sanskrit Education Rules, 1977 regulating the recruitment to posts in and the conditions of service of persons appointed to the Rajasthan Sanskrit Education Service. Part-III of the Rules of 1977 prescribes methods of recruitment. Clause (b) of sub-rule(1) of Rule 6 of the Rules of 1977 provides that recruitment to the posts in service by way of promotion shall be made in accordance with part-Vth of the Rules. According to Rule 9 of the Rules of 1977 appointing authority is required to determine each year the number of vacancies anticipated during the following 12 months and number

of persons likely to be recruited by each method. Part-Vth of the Rules of 1977 prescribes for recruitment by promotion. Sub-rule(6) of Rule 23 in part-Vth of the Rules of 1977 provides that selection for promotion to all other higher posts or higher categories of posts in the Service shall be made on the basis of merit alone. Rule 25 of the Rules of 1977 pertains to urgent temporary appointment in service and according to it a vacancy in the Service which cannot be filled in immediately either by direct recruitment or by promotion under the rules may be filled in by Appointing Authority or by Authority competent to make appointments as the case may be by appointing in an officiating capacity thereto an officer eligible for appointment to the post by promotion or by appointing temporarily thereto a person eligible for direct recruitment to the Service where such direct recruitment has been provided under the provisions of the Rules of 1977. The post of Director is a selection scale post and is required to be filled in 100% by way of promotion. Being highest post the criteria for promotion to the post of Director is merit alone as prescribed under sub-rule (6) of Rule 23 of the Rules of 1977. The entry No.1 in Group-A to Schedule appended with the Rules of 1977 prescribes source of recruitment, minimum academic qualification and experience for appointment, post or posts from which promotion may be made, minimum qualification and experience for promotion and certain

remarks relating to appointment to the post of Director by way of promotion, same reads as under:-

S.No.	Name of post	Source recruitment with percentage	Minimum academic qualification and experience for direct recruitment	Post or posts from which promotion is to be made	Minimum qualifications and experience for promotion	Maximum age-limit for direct recruitment	Remarks
1.	Director	100% by promotion	(a)Ist Class Acharya with English as one of the subjects in Shastri or in B.A. or Ist Class post graduate in Sanskrit with English as one of the subject in B.A. or in Shastri, and (b)Five years teaching experience of Acharya or post graduate classes in an Institution not below the post Acharya/ Post graduate College. or Five years teaching experience as Professor of Sanskrit in a University established by law.	Post mentioned in GroupII	Seven years experience on the post mentioned in Co.No.5.	45 years	If no suitable candidate is available either by Promotion on the advice of the Departmental Promotion Committee or by direct recruitment through the Commission, appointment may be made by deputation of an I.A.S. Officer, or of a R.E.S. Officer holding a post not lower than that included in Group 'C' of the Schedule annexed to the Rajasthan Educational Service Rules, 1970 or of an Educationalist on contract. Appointment by direct recruitment or promotion, shall not be continued until the next meeting of Departmental Promotion Committee, except with the concurrence of the Commission.

From scheme of the Rules of 1977 it is apparent that the appointment to the post of Director, Sanskrit Education is required to be made by way of promotion by adhering the criteria of merit and the post in normal course should be filled in from amongst the members of Rajasthan Sanskrit Education Service

only. The post of Director, Sanskrit Education can be filled in from amongst the members of Indian Administrative Service or Rajasthan Education Service in event of non-availability of suitable candidate.

The merits of present case are required to be examined in light of the Rules of 1977. It is admitted position that the post of Director felt vacant on retirement of Shri Sohanlal Sharma on 31.12.2003. On the date of retirement the petitioner was eligible under the Rules of 1977 to be promoted as Director, Sanskrit Education but the respondents instead of making appointment on urgent temporary basis in accordance with Rule 25 of the Rules of 1977 chose to hand over charge of the post to administrative officers. It is also admitted position that the Departmental Promotion Committee met on 3.8.2004 to consider the candidature of eligible candidates for the purpose of promotion to the post of Director, Sanskrit Education. The statement of Annual Confidential Reports of the petitioner was produced before the Departmental Promotion Committee. According to the statement referred above the reporting officer assessed services of the petitioner “very good” in the years 1996-97, 1997-98, 1998-99, 1999-2000, 2000-2001 and 2001-2002. The reviewing authority accepted the assessment made by the reporting officer. For the year 2002-2003 the reporting officer assessed services of the petitioner as “good” and the same was also

accepted by the reviewing authority. The Departmental Promotion Committee which met on 3.8.2004 considered entire service record of the petitioner including the Annual Performance Appraisal Report, DE/PE reports etc. and found the petitioner a person fit to be recommended for promotion under the criteria of merit as Director, Sanskrit Education against the vacancies of 2003-04. The relevant portion of the recommendations made by the Departmental Promotion Committee in its meeting dated 3.8.2004 is abstracted below:-

> "निदेशक, संस्कृत शिक्षा के पद को योग्यता के आधार पर भरा जाना है । इस पद हेतु प्राचार्य, आचार्य के पद पर नियमित रूप से पदोन्नत/कार्यरत व्यक्ति जो 07 वर्ष का अनुभव रखते है, मे से योग्यता के आधार पर चयन किया जाना है । दिनांक 01.04.2003 की पात्रता सूची में श्री मिथलेश कुमार शर्मा, 07 वर्ष का प्राचार्य, आचार्य कालेज के पद का अनुभव रखने के कारण निदेशक, के पद पर पदोन्नति हेतु पात्रता रखते है । इनका सेवाभिलेख वार्षिक कार्य मूल्यांकन प्रतिवेदन, डी.ई./पी.ई. की रिपोर्ट आदि समिति के समक्ष प्रस्तुत की गई । विचार विमर्श के पश्चात श्री मिथिलेश कुमार शर्मा को वर्ष 2003-2004 की निदेशक की रिक्ति के विरूद्ध योग्यता के आधार पर चयन कर अभिशंषित करने का निर्णय लिया गया ।
>
> | एस.डी. | एस.डी. | एस.डी. |
> |---|---|---|
> | (डा0 एस 0 एस 0 टाक) | (सूरजमल केड़वाल) | (बी0 एन 0 शर्मा) |
> | अध्यक्ष | सदस्य | सदस्य सचिव" |

In the present case the appointing authority in accordance with Rule 9 of the Rules of 1977

determined vacancies pertaining to the post of Director, Sanskrit Education for the year 2003-04 and initiated proceedings in accordance with part-Vth of the Rules of 1977. The Departmental Promotion Committee in accordance with Rule 23 of the Rules of 1977 made a recommendation to the appointing authority then there is no just and valid reason with the respondents for not acting upon the recommendations made by the committee. The respondents failed to satisfy the Court by showing any reason for not giving effect to the recommendations made by the Departmental Promotion Committee.

The petitioner being found fit to be promoted as Director, Sanskrit Education by the Departmental Promotion Committee, it is obligatory for the appointing authority to consider the recommendations made by the Departmental Promotion Committee and to make appointment of the petitioner as Director, Sanskrit Education against the vacancies of 2003-04 if he is otherwise not ineligible to hold the post concerned.

The only reason which appears to exists for not giving effect to the recommendations made by Departmental Promotion Committee is the reason given in the letter dated 15.12.2005 according to which a proposal for amendment under the Rules of 1977 is under consideration to fill up the post of Director,

Sanskrit Education from amongst the members of Indian Administrative Service/Rajasthan Administrative Service. A proposal for amendment under the Rules cannot be a reason for not implementing the existing Rules. A valuable right accrued in favour of the petitioner to be considered for appointment by way of promotion on 31.12.2003, the day on which Shri Sohanlal Sharma retired from services and the post of Director, Sanskrit Education fall vacant. The candidature of the petitioner was required to be considered for promotion as Director, Sanskrit Education on the day post felt vacant. The appointing authority, for no just and valid reason not proceeding for making appointment by way of promotion by acting upon the recommendations made by the Departmental Promotion Committee which met on 3.8.2004.

It is pertinent to note that the appointing authority never wanted to keep the post of Director, Sanskrit Education unfilled as the charge of the same was handed over to Shri G.P.Shukla on 1.1.2004 and thereafter to Shri R.K.Jain on 31.7.2004. This fact clearly shows that the respondents unnecessarily delayed in considering and acting upon the recommendations made by the Departmental Promotion Committee which recommended the petitioner to be appointed as Director, Sanskrit Education by way of promotion under the criteria of merit.

The respondents in reply to the writ petition stated that the charge of the post of Director, Sanskrit Education was given to Shri G.P.Shukla w.e.f. 1.1.2004 and to Shri R.K.Jain w.e.f. 1.7.2004 in interest of administration. However, nothing is said as to why the post of Director, Sanskrit Education, on retirement of Shri Sohanlal Sharma was not filled-in in accordance with Rule 25 of the Rules of 1977, which prescribes for urgent temporary appointments from amongst the members of Rajasthan Education Service. The petitioner was eligible to be promoted under the Rules of 1977 on 31.12.2003, as such an appropriate course in accordance with the Rules of 1977 before the respondents was to make urgent temporary appointment by way of promotion, in accordance with Rule 25 of the Rules of 1977 but the respondents dehore the Rules handed over charge of the post to administrative officers. The charge of the post could have been given to a member of Indian Administrative Service or to a member of Rajasthan Education Service only in the event of non-availability of eligible person from Rajasthan Sanskrit Education Service. The petitioner was the person suitable and eligible, available for promotion on 31.12.2003. This Court highly deprecate the tendency of the respondents to ignore the statutory provisions and to adopt a method which is not in consonance with the Rules.

In view of whatever discussed above this writ petition deserves acceptance. The same, therefore, is allowed. The respondent State is directed to consider the recommendations made by the Departmental Promotion Committee which met on 3.8.2004 and recommended the petitioner for appointment by way of promotion to the post of Director, Sanskrit Education against the vacancies of the year 2003-04. In the event petitioner is not otherwise found ineligible, the promotion be accorded to him in accordance with the recommendations made by the Departmental Promotion Committee within a period of four weeks from the date the petitioner serves a certified copy of this order upon the Secretary, Department of Personnel, Government of Rajasthan, Jaipur.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.